IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

(SPECIAL ORIGINAL JURISDICTION)

Monday, the Sixteenth day of August, two thousand and four

PRESENT

THE HON'BLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION NO. 27485 OF 2003

BETWEEN:

S.K.Mahaboob Ali

Ex CRPF Service.

Petitioner

And

1. The Director General of Police, Central Reserve Police Force, Block No.1, CGO Complex, Lodhi Road, New Delhi.
2. The Inspector General of Police, Central Reserve Police Force, Special Sector, Old Secretariat, Block No.11, Civil Lines, Delhi-54.
3. The Deputy Inspector General of Police, Central Reserve Police Force, Bhopal, Madhya Pradesh.
4. The Addl.Deputy Inspector General of Police, Central Reserve Police Force, Group Centre, A.B., Road, Shivpuri, Madhya Pradesh.

Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction more particularly one in the nature of writ of Certiorari, calling for the records from the file of the 3rd respondent relating to the order No. PXII-22-23/2002, Estt-I, dated 24-6-2003, confirming the removal order No.P-VIII-10/200-EC-II, dated 26-10-2002 of the 4th respondent and quash the same, declaring it as arbitrary, discriminatory and violative of the principles of natural justice and consequently direct the respondents to reinstate the petitioner into service forthwith with all other consequential benefits, monetary and otherwise.

For the Petitioner: Mr.V.Jagapathi, Advocate.

For the Respondents 1 to 4: Mr. A.Rajasekara Reddy, SC for Central Government.

Smt.E.Urmila, Addl.SC.,for Central Government.

The Court made the following :

ORDER:

The petitioner questions the order of the 4th respondent in removing his services, as confirmed by the third respondent.

The petitioner is the resident of Nandyal village and town of Kurnool District of Andhra Pradesh State. He was enrolled as General Duty Constable in Central Reserve Police Force (CRPF) on 10-6-1993. After completion of initial training for a period of one year, he was posted to No.76 Battalion in Srinagar area in February, 1995 and worked there till March, 1997. Thereafter, he was shifted to various units in CRPF., and finally he was posted to Group Centre, CRPF., Shivpuri of Madhra Pradesh State in the year 1998.

On the allegation that the petitioner being member of the CRPF., has committed an offence of misconduct and disobedience while he was on duty from 10-6-2000 to 16-6-2000 with regard to the recruitment of

Constables and accordingly, a departmental enquiry was ordered by the Additional Director General of Police, Group Centre, CRPF., Shivpuri of Madhya pradesh State. A charge sheet dated 17-8-2000 was also issued to the petitioner and three others, and after calling for his explanation, the enquiry officer conducted the enquiry. The witnesses were examined and the entire enquiry was conducted in the State of Madhya Pradesh.

As per the enquiry report, the allegation against the petitioner is that the petitioner while working as Constable under Dr.S.K.Purandre during the admissions, he used to carry the doctor's briefcase to the recruitment site before the admission began. He took Rs.15,000/- from the constable Satyendra Singh Bandaria, and out of the said amount, he gave Rs.5,000/- to Master Sanjay Goswamy son of Ward Boy B.K.Gosway through his wife, which was recovered later by the Presiding Officer of the Recruitment Board P.P.Singh Commandant. Other constables also gave an amount of Rs.15,000/- to the petitioner as stated by certain witnesses. Thus, the charge of misconduct against the petitioner is held to be proved by the enquiry officer and based on the enquiry report, the 4th respondent vide his order dated 26-10-2002 removed the petitioner from service. As against the said order, the petitioner filed an appeal through the 4th respondent before the second respondent at Delhi.

The Deputy Inspector General of Police, Central Reserve Police Force, Bhopal, Madhya Pradesh State/third respondent herein passed the order dated 14-06-2003 confirming the order of the 4th respondent. The third respondent is also stationed at Bhopal of Madhya Pradesh State.

The Departmental enquiry was held at Shivpuri of Madhya Pradesh, the witnesses were examined by the enquiry officer at Shivpuri of Madhya Pradesh State and after service of the report of the enquiry officer to the petitioner, his explanation was called for and thereafter, the removal order was made by the third respondent stationed at Shivpuri of Madhya Pradesh. Aggrieved by the same, the petitioner

filed the appeal on several grounds. It is stated that the third respondent is not the appellate authority, but he as the appellate authority illegally entertained the appeal and confirmed the order of the 4th respondent.

While denying all the allegations made in the writ petition, the learned counsel appearing for the respondents has taken a preliminary objection with regard to the maintainability of this Writ petition in the High Court of Andhra Pradesh, as the cause of action occurred in the State of Madhya Pradesh, the enquiry was conducted in Madhya Pradesh, the removal order was also made within the territorial jurisdiction of Mdhya pradesh and the order in the appeal was also made by the authority in the State of Madhya Pradesh and therefore, the High Court of Madhya Pradesh alone has got the territorial jurisdiction to entertain the writ petition. It is stated that merely because the petitioner is the resident of Kurnool District of Andhra Pradesh State, but the petitioner involved in the case of misconduct within the jurisdiction of the State of Madhya pradesh and the enquiry was conducted and removal order was also made in that State, therefore, the Courts of Madhya Pradesh alone have got jurisdiction to entertain the Writ Petition. Therefore, without going into the merits of the case and whether the third respondent is the appellate authority or not, the learned counsel for the petitioner was asked to advance his arguments about the maintainability of the writ petition in this High Court. Accordingly, both the counsels have advanced their arguments with regard to the maintainability of the writ petition.

Admittedly, the offices of all the respondents are outside the jurisdiction of this Court. The only cause of action said to have been arisen is that the petitioner is the resident of Nandyal, Kurnool District of Andhra Pradesh State. There is no dispute that the cause of action arose within the jurisdiction of respondents 3 and 4 i.e., in the State of Madhya Pradesh. The entire cause of action right from making the report by the Commandant with regard to receipt of money by the petitioner for influencing the recruiting officer for recruitment of certain constables and initiation of disciplinary proceedings and conducting

enquiry, examination of witnesses and removal of the petitioner etc., have been taken place in the state of Madhya Pradesh alone. Merely because the petitioner is residing in Andhra Pradesh, it cannot be said that the part of cause of action arose within the territorial jurisdiction of this Court.

Under Article 226(2) of Constitution of India, the High Court is empowered to exercise the writ jurisdiction to issue any writ in relation to the territories within which the cause of action wholly or in part arises for the exercise of such power. The petitioner need not be the resident of State of Madhya Pradesh, but if any part of cause of action arose in relation to the question involved in this writ petition right from the complaint against the petitioner till the removal of his services in the State of Andhra Pradesh, Writ is maintainable here, but entire cause of action arose in the State of Madhya pradesh only and therefore, no cause of action arose in the State of Andhra Pradesh, this Writ Petition is not maintainable.

The expression cause of action means, the bundle of facts which the petitioner must prove, if traversed, entitle him to a judgment in his favour by the Court. Therefore, in determining the objection of the lack of territorial jurisdiction, the Court must take all the facts clear in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. I am of the opinion that no part of cause of action arose within the territorial jurisdiction of this Court and as such the writ petition is not maintainable.

The petitioner has not stated anything about the maintainability of the writ petition in this Court in the affidavit, but advanced oral arguments, stating that the removal order was communicated to the petitioner through the Station House Officer, II-Town Police Station, Nandyal of Kurnool District and therefore, part of cause of action arose in the State of Andhra Pradesh in view of the receipt of removal order in the State of Andhra Pradesh.

Similar question arose in the case of **R.Venkateswar Rao-Havaldar**

Vs. Union of India and others before the Division Bench of this Court and in that case also summons were served in the State of Andhra Pradesh in regard to the Court of enquiry, and it was held that it does not give rise to any cause of action to question the order of punishment imposed upon him, particularly when at the relevant point of time, he was neither posted in the State of Andhra pradesh nor any disciplinary proceedings have been taken place in the State of Andhra Pradesh and the order of punishment was also not passed and communicated within the territorial jurisdiction of this Court. Though in this case, the order of removal was communicated within the territorial jurisdiction of this Court, the learned counsel appearing for the respondents submits that mere communication of order cannot be said that part of cause of action arose within the territorial jurisdiction of this Court.

The place of residence of the petitioner is in the State of Andhra Pradesh and the communication of said order in the State of Andhra Pradesh has no bearing with the lis or the dispute involved in the case which do not give rise to a cause of action so as to confer territorial jurisdiction of this Court. However, the petitioner has not stated anything about the maintainability of this writ petition in this Court in his writ affidavit.

The learned counsel for the respondents contended that the bundle of facts which would constitute a cause of action giving rise to a dispute which would confer territorial jurisdiction on the Courts at Madhya Pradesh alone, but not in this High court. In support of her contention, she relied on the Judgment of the Apex Court in the case of **Union of India and others Vs. Adani Exports Ltd., and another.** The learned counsel for the respondents also placed reliance on the Judgment of the Apex Court in the case of **Oil and Natural Gas Commission Vs. Utpal Kumar Basu and others, and State of Rajastan and others Vs. M/s.Swaika Properties and another** in support of her contention that merely because the petitioner resides

within the territorial jurisdiction of this Court, it cannot be said that the cause of action arose within the jurisdiction of this Court.

On the other hand, the learned counsel appearing for the petitioner relied on the Judgment of the Supreme Court in the case of **Dinesh Chandra Gahtori Vs. Chief of Army Staff,** wherein a communication sent to the wife of the petitioner within the territorial jurisdiction of Allahabad High Court was challenged in the High Court of Allahabad, but the same was dismissed on the ground that the summary trial proceedings were conducted in the State of Punjab and orders were also passed in Punjab by the West Commandant and therefore, the High Court of Allahabad has no territorial jurisdiction to entertain the writ petition and the writ petition filed in the year 1992 was dismissed in the year 1999. On appeal, the Supreme Court held that the High Court should have taken into consideration the fact of filing the writ petition in 1992,which was dismissed in 1999 and also that it should taken into consideration the fact that the Chief of the Army Staff may be sued anywhere in the country and therefore, placing reliance only on the cause of action, the High Court ought not to have dismissed the writ petition. Under those circumstances, the Supreme Court allowed the appeal, setting aside the order of the High Court and remanding the matter to the High Court for fresh disposal. There is no discussion about the cause of action under Article 226(2) of the Constitution of India in the said Judgment and on the other hand, the latest Judgment of the Supreme Court in the case of **M/s.Kusum Ingots and Alloys Ltd., Vs. Union of India and another**, the Supreme Court while considering the relevant provisions of Article 226 (2) and Section 20 of the Code of Civil Procedure, held that:

> "Even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum convenience".

In view of the aforesaid Judgment, I am of the opinion that in the absence of any specific pleading in the writ petition as to the cause of action for maintaining the writ petition in this High Court, the writ petition is not maintainable in this Court.

The Writ Petition is accordingly dismissed. No order as to costs.

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V.ESWARAIAH,J

Date: 16-08-2004.

Shr.

Asst. Registrar.

To

1. The Director General of Police, Central Reserve Police Force, Block No.1, CGO Complex, Lodhi Road, New Delhi.
2. The Inspector General of Police, Central Reserve Police Force, Special Sector, Old Secretariat, Block No.11, Civil Lines, Delhi-54.
3. The Deputy Inspector General of Police, Central Reserve Police Force, Bhopal, Madhya Pradesh.
4. The Addl.Deputy Inspector General of Police, Central Reserve Police Force, Group Centre, A.B., Road, Shivpuri, Madhya Pradesh.
5. Two CD copies.

Note:

Furnish copy in three days.

B/o

Mv/Bcj